

Exhibit 4

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: IAS PART 53
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ORCHARD HOTEL, LLC,
Plaintiff,

Index No.
850044/11

-against-

D.A.B. GROUP, LLC, ORCHARD CONSTRUCTION, LLC,
FLINTLOCK CONSTRUCTION SERVICES, LLC, JJK
MECHANICAL, INC., EDWARD MILLS & ASSOCIATES
ARCHITECTS, P.C., CASINO DEVELOPMENT GROUP,
INC., CITYWIDE CONSTRUCTION WORKS, INC., EMPIRE
TRANSIT MIX, INC., MARJAM SUPPLY CO., INC.,
ROTAVELE ELEVATOR, INC., SMK ASSOCIATES, INC.,
FJF ELECTRICAL CO., INC, CITY OF NEW YORK, NEW
YORK STATE DEPARTMENT OF TAXATION & FINANCE,
LEONARD B. JOHNSON, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD, BROOKLYN FEDERAL
SAVINGS BANK, STATE BANK OF TEXAS, and JOHN DOE
#1 through JOHN DOE #100, the last 100 names
being fictitious, their true identities unknown
to plaintiffs, and intended to be the tenants,
occupants, persons or corporations, if any,
having or claiming an interest in or lien upon
the premises described in the complaint,
Defendants.

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July 31, 2012
60 Centre Street
New York, New York

B E F O R E:

HON. CHARLES E. RAMOS,

Justice

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24 LEE RUTHEN
25 Official Court Reporter

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Proceedings

predecessor, who was -- who were brought in as defendants on the counterclaims. He was addressing it in the context of a 3211.

In essence, what the defenses are here, Judge, is that the borrower reasonably relied on representations. Not just representations and not just oral representations, there were writings. Counsel refers to them by consultants and others.

The primary one was Joanne Gallo, I. Believe she ended up -- she may have been a consultant at the time, she ended up being an executive vice-president at the original lender, and, in fact, has submitted an affidavit in connection with this motion for summary judgment in essence authenticating documents. She doesn't address the issues of the defendants' defenses.

There is an e-mail in the opposition papers. The e-mail is a writing, Judge, and the e-mail references the term of the loan.

Now, the loan on the face of it turned out on March 2011, no question.

On February 28, 2011, your Honor, the loan was performing, payments were being made on the interest, payments were being made on the advances, construction was very active.

Flintlock, the defendant in this case and

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Proceedings

cross-movant, was the general contractor, the subs were actively working. March 1, shortly thereafter, the plug is pulled and it goes down the tubes.

Why is this important? In August of 2010, a new general contractor was brought in supplanting this Cava general contractor. That contract needed to be approved by the lender, Brooklyn Federal, the plaintiff's predecessor.

They approved that contract. That contract called for a substantial completion date 430 days subsequent to August of 2010. That would have brought us into November of 2011. The bank approved that contract, they approved that contract, your Honor, and shortly thereafter there was a usual -- I think there was a rebar problem with the concrete.

There is an e-mail from Joanne Gallo to my client, principal of the owner of the company, saying Ben, I know there is a problem with the rebar, I hope it doesn't delay the ultimate completion of the project in November. She could have only been referring to November of 2011, several months after the so-called maturity date --

THE COURT: That was completion of the project. How does that help us in extending the term of the loan?

MR. WALLACE: Because they never would have approved a general contract on this loan if the general contractor wasn't sure that it was going to get paid by

1 Proceedings

2 Brooklyn Federal and maybe the plaintiff is different than
3 the estoppel defense.

4 I think the cases -- there are cases cited in my
5 papers, your Honor, the cases show that's what estoppel is
6 all about.

7 We're looking for fair play and justice here,
8 Judge. All we're looking for is a deposition. Let's take
9 the deposition of Joanne Gallo, another man, Bruce Gordon,
10 who sent these e-mails, maybe Mr. Patel, who is an officer
11 of the participant bank.

12 That's all the defendant has been asking for since
13 day one of this case. Let's get a fair share here. They
14 pulled the plug on this project having in essence extended
15 that loan to November of 2011, and the project would have
16 been substantially material and complete in --

17 THE COURT: Plaintiff, how do we explain to the
18 Appellate Division that the bank, your predecessor,
19 consented to the completion of the project in November 2011?

20 How is that consistent with the completion date of
21 March 2011?

22 MR. SCHARF: You are directing that to me, your
23 Honor?

24 THE COURT: Yes.

25 MR. SCHARF: First of all, the communication that
26 is Mr. Wallace was addressing never happened in the matter

1 Proceedings

2 justifiable reliance has the same elements in the estoppel
3 scenario, it must fall as a matter of law.

4 THE COURT: What authority do you have for that
5 proposition? I'm aware of no case that holds that.

6 MR. SCHARF: That hold that the justifiable
7 reliance for estoppel and fraud is one and the same?

8 THE COURT: Yes.

9 MR. SCHARF: Let me take a peek, your Honor.

10 THE COURT: To put it in a criminal context, it is
11 as if estoppel is a lesser degree of a crime.

12 MR. SCHARF: It is a lesser included offense?

13 THE COURT: I'm really disturbed -- you've sent
14 notices out for depositions, I take it.

15 MR. WALLACE: With the answer for September, your
16 Honor.

17 MR. HOLLANDER: Your Honor, I represent Flintlock.
18 We had sent out discovery demands at the beginning of this
19 case, and Mr. Scharf's client has moved for a protective
20 order in connection with that discovery under their argument
21 that, as a matter of law, any discovery documentation-wise,
22 depositions, is irrelevant based on their legal position.

23 So discovery demands are out there.

24 MR. SCHARF: Just so you know, Judge Fried -- we
25 had a number of conferences, and Judge Fried had not
26 permitted the discovery that they are talking about to go